IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 4427 OF 1995

Krishna Gopal Vaity .... Petitioner

versus

M/s. Collins and Company ..... Respondent.

Shri A.V.Bukhari for the petitioner.
Shri C.U.Singh i/by Haresh Mehta & Co. for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 23RD/24TH APRIL, 2007

JUDGMENT;

1. By the present petition, the petitioner workman takes an exception to an award dated 14-5-1993 passed by the Presiding Officer, First Labour court, Bombay in charge 13th Labour Court at Bombay.

2. The petitioner initially joined the employment of the respondent Company as a Die Maker in the year 1964 and came to be promoted as highly skilled worker in the year 1965 in the Tool Room Department of the respondent company. During the period of 1970-72 the petitioner was elected as a Committee Member of the Bhartiye Kamgar Sena representing workers of Tool Room, Machine Shop and Maintenance Department of the Respondent company. After the year 1972, the

petitioner ceased to be the Committee member of the union, as such did not have any authority to represent the workmen. The workmen of Tool Room Department had made certain demands/grievances touching the promotion/clasification, sometime in August 1974. It is the case of the petitioner that since the management of the respondent Company found it difficult to resolve the issue of promotion/classification of the employees working in the Tool Room department, the partner of the company called him to assist the respondent in resolving the said issue. On 17-9-1974 the respondent company issued letters granting special increment to 9 of the workmen of the Tool Room Department instead of granting promotion to the post of highly skilled grade. The petitioner further claims that the said 9 workmen refused to accept the letter of increment as they wanted promotion to the highly skilled grade. Thus the partner of the respondent company once again called petitioner to pursue the workers to accept the letters of special increments in lieu of their demand for promotion. According to the petitioner, as the demands of the workers were justified and as the management was deliberately and intentionally declining to concede to the said demand, the petitioner expressed his inability to help the management in that regard and it is for this reason,

according to him, he was falsely implicated and proceeded against in a departmental enquiry on concocted charges. The charges against the petitioner were to the following effect:

> *i) On 18-9-1974 at about 3.00 p.m. petitioner instigated 9 workmen to refuse to accept merit increments letters and to stop work in Tool Room Department.*
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> *ii) On 20-9-1974 at 3.30 p.m. petitioner pressurised and coerced Supervisor Mr. Parkar to accompany to Tool Room Superintendent Mr. Kanchan for discussion, and*
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> *iii) Lastly on 21-9-1974 at about 3.20 p.m. petitioner instigated and incited workers of Tool Room and Machine Shop to encircle/gherao Mr. Kanchan and Mr. Makhija and the said two officers were wrongfully and illegally restrained for about 50 minutes.*
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> *iv) During this period Mr. Kanchan was psycially pushed back and not even permitted to go to bathroom.*

Touching the above referred incidents briefly,I

proceed to narrate further developments,

3. After service of the charge sheet, the petitioner submitted his written explanation and denied the charges levelled against him. The petitioner has denied the occurrence of the incident on 21-9-1974 though he admits his presence along with the other workmen when according to Mr. Kanchan he was gheraod. Domestic enquiry was held touching the said charges and on behalf of the company, three witnesses were examined, Mr. Kanchan, Mr. Parkar and Mr. Makhija, whereas the petitioner examined himself and other five co-workers as defence witnesses. After recording of the evidence, the enquiry was concluded. The enquiry officer submitted his report and the finding and held therein that the charges in respect of the incident which took place on 18-9-1974 and 21-9-1974, the petitioner is guilty of the act of misconduct whereas the enquiry officer has exonerated the petitioner in relation to the charge, touching the incident alleged to have taken place on 20-9-1974. Acting on the report and findings recorded by the enquiry officer, the respondent company passed an order of discharge by way of punishment and terminated the petitioner from service.

4. The petitioner being aggrieved by the order of

discharge, raised an industrial dispute challenging the order of punishment under the provisions of Industrial Disputes Act. The dispute was referred for adjudication being Reference (IDA) No.942 of 1975. The labour court was pleased to pass an award on 29-4-1980 and rejected the Reference.

5. The petitioner being aggrieved thereby, preferred a writ petition, bearing Writ Petition No. 62 of 1981 before this court. By the judgment dated 13-3-1990 High Court was pleased to allow the writ petition and proceeded to set aside the award dated 29-4-1980 and remanded the matter to the Labour court for fresh adjudication in the light of observations made in the judgment. After the remand by the High court, the labour court was pleased to hear the parties afresh and passed an award granting reinstatement with continuity of service with full backwages to the petitioner. Aggrieved by this exparte award passed by the labour court on 31-12-1990 the respondent company preferred a writ petition bearing W.P.No. 3410 of 1991. The learned Single Judge dismissed the writ petition at the stage of admission. However in an appeal filed by the respondent company bearing Appeal No. 1128 of 1991 before the Division Bench of this court, Minutes of the Order were filed. As per the said Minutes, the company deposited a sum of

Rs.2,21,000/- and the matter was remanded to the Labour Court for fresh adjudication. After remand of the matter in terms of Minutes of Order dated 6-1-1992, the Labour court heard the matter afresh and passed an Award on 14-5-1993. It is this Award, the legality and validity of which, is the subject matter of the present writ petition.

6. By the Award dated 14-5-1993, though the labour court granted reinstatement with continuity of service to the petitioner, it declined to grant backwages. Aggrieved by that part of the award which declined to grant backwages, the petitioner has filed this writ petition.

7. It will not be out of place to mention at this juncture that from 9-1-1992 to October 1993 the petitioner has been paid the wages under an interim order and the petitioner has been reinstated in service in November 1993. In this fact situation, the dispute is required to be resolved. I am informed that the petitioner stood retired from service on attaining the age of superannuation in the month of June 1998. It may be incidentally stated that the award passed on 14-5-1993 was called in question by filing this writ petition after a period of about two years i.e. on 14-6-1995. Thus the claim made in the

present writ petition is for backwages for the period commencing from 2-1-1975 to 31-12-1991.

8. The charge touching the incident dated 18-9-1974 is to the effect that at about 3.00 p.m. while on duty without any justifiable reason and without any authority the petitioner instigated and incited the workmen from the Tool Room Department to return the letters granting increments and further instigated and incited the workmen of the Tool Room Department to stop the work and upon their stopping the work, the petitioner took them to the Supervisor Mr. Parkar's table. The petitioner is said to have told the supervisor and the Tool Room Superintendent Mr. Kanchan who was sitting with Mr. Parkar, that all the workmen in the tool Room Department should be promoted in the highly skilled grade. The petitioner demanded decision from the management in that regard by next working day i.e. 20-9-1994. I do not take into account as to what transpired on 20-9-1994 as the charge in relation to the said incident has been held to be not established.

9. On 21-9-1974 at about 3.20 p.m. when the Tool Room Superintendent Mr. Kanchan was coming to the machine shop from the Maintenance department the petitioner said to have approached him and told him

that the petitioner wanted to discuss with him the promotion issue of the workmen of the Tool Room Department. At this, the superintendent informed the petitioner that he did not wish to discuss anything pertaining to the collective issue, as the petitioner is not the representative of the workmen and he not being the committee member of the union. Thereafter when the Tool Room Superintendent was proceeding towards Mr. Makhija's table the petitioner and the other workmen closely followed Mr. Kanchan and no sooner he reached Makhija's table, the petitioner signalled other workmen of the Tool Room Department to encircle (gherao) the Tool Room Superintendent. As a result of instigation by the petitioner, the workmen from the Tool Room and the machine shop, gheraod the superintendent Mr. Kanchan and Makhija causing wrongful and illegal confinement. The gherao is said to have lasted for 50 minutes. The petitioner has during the time of said gherao, demanded that the concerned workmen be granted promotion to the highly skilled grade when the Tool Room Superintendent expressed his inability to consider the demand of the petitioner, the petitioner forced him to take the petitioner and other workmen to the partner of the respondent company by name Mr. C.R.Shah to support the demand of the workmen. When the Superintendent of the Tool Room expressed his desire to take usual duty

round in the department and urged to let him go, the petitioner along with other workmen prevented and physically obstructed him from leaving the place where he was confined. After the petitioner secured assurance and persuasion from the superintendent, the officers were permitted to leave. On the above allegations, the petitioner was charged for instigating and inciting the workmen to commit acts subversive of discipline. The charge sheet states the misconduct thus:

> i) Spreading dis-affection amongst the workmen towards the management.
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> ii) Instigating and inciting the workmen to commit acts subversive of discipline and other illegal acts and acting in furtherance thereof
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> iii) Acting in a manner prejudicial and detrimental to the interest of the company and discipline:
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> iv) Causing wrongful illegal restraint to the superior and abatement thereof;
>
> v) Wilful damage to work in process; and

vi) Commission of an act subversive of discipline on the premises of the establishment.

After appreciation of evidence on record, the labour court has held that the charge of misconduct touching the incidents dated 18-9-1974 and 21-9-1974 are proved whereas the charge of misconduct touching the incident dated 20-9-1974 has not been established.

10. The learned counsel for the petitioner Mr. Bukhari has raised the following contentions assailing the finding recorded by the labour court holding that the charges of misconduct are proved.

a) That having regard to the nature of the act of misconduct i.e. gherao, only one person viz. the petitioner could not be proceeded against in a departmental enquiry. It is pointed out that no other workmen was charge sheeted and no enquiry was directed against others who participated in the gherao. It is thus the submission of the learned counsel that the petitioner has been discriminated against, and as such the petitioner is entitled to parity.

b) That the evidence of the witnesses examined on behalf of the petitioner has not been taken into consideration by the labour court.

c) It is also submitted that the labour court did not independently consider the evidence recorded and the material as is expected under section 11-A of the Industrial Disputes Act.

d) It is submitted that the respondent company has certified standing orders governing the service conditions of the employees and the disciplinary action has to be in conformity with the certified standing orders.

e) It is then contended that in the present case the charges at serial nos. 1 to 4 are not enumerated in the list of misconduct under clause 27 of the Certified Standing Order and since the said charges are not enumerated in the Certified Standing Order, the company, in law, is not entitled to take any disciplinary action against the workmen in respect of the said charges.

f) Lastly, it is contended that an earlier

Award passed by the labour court, which came to be set aside on the basis of filing of the Minutes of the Order before the Division Bench of the High Court, is a correct Award and the same goes to consider the entire evidence in its proper perspective, whereas the impugned Award though passed by the same Presiding Officer, is in variance with the earlier findings recorded in the last but one Award. It is tried to be contended that after the remand, no additional evidence was led and there was no change in the circumstances for the Presiding Officer to warrant, taking a different view of the matter than the one, he had taken while passing the award at the earlier point of time. In this regard the case of the respondent is that the award which has been set aside, cannot be looked into even to find out as to whether the reasoning given therein were more appropriate or otherwise than the one finding place in the impugned award. It is also pointed out that the said award which is set aside and , which was passed in favour of the petitioner, was an exparte award and the consideration of the issues therein was an exparte consideration.

11. I proceed to deal with the contentions raised by the petitioner. In regard to the first submission made by the learned counsel for the petitioner, that the petitioner was charged with an act of misconduct in the nature of gherao i.e. wrongfully and illegally confining Mr. Kanchan and Mr. Makhija in the company premises during the office hours was obviously an act done by number of workers. and hence, the petitioner alone could not have been discriminated against and proceeded in a departmental enquiry. Whereas no action has been taken against the other erraying employees.

12. The learned counsel for the respondent touching the said submission has contended that the case of the petitioner and that of the other workers, is in no way comparable in as much as the petitioner had signalled the other workmen to encircle the officers and on account of the said instigation and incitement, the other workers had gheraod the officers. It is then submitted that the petitioner’s claim for parity is misconceived. The evidence on record reveals that the petitioner was the Committee Member of the union between 1970-72. However though he ceased to be committee member of the union he had taken up the cause of the workmen from Tool Room department and the same was obviously without any authority. The

petitioner does not deny his presence at the time of occurrence of the incident on 18th and 21st. The only question as to what roll he has played. In regard to the roll played by the petitioner, the crucial evidence is that of Mr. Kanchan and Mr. Parkar and Mr. Makhija. Mr. Kanchan and Mr. Makhija are the persons who were subjected to wrongful restraint and their evidence has been believed by the enquiry officer so also the labour court, as trustworthy and inspiring confidence. It does appear that the present petitioner had nothing personal at stake and he was trying to raise the grievance of the other workmen, without any authority, may be with a view to restore his leadership. In the year 1970-72 the petitioner was elected as a committee member of the union whereas thereafter one Mr. Takne came to be elected as a committee member. Mr. Takne had stepped in the witness box on behalf of the present petitioner. He has categorically deposed that the petitioner was not authorised to take up the cause of the workmen and despite the said position, the petitioner seems to have taken up the cause of other employees. It has come in the evidence of the witnesses examined by the respondent that as the petitioner signalled other workmen to encircle Mr. Kanchan and Mr. Makhija, the act of gherao was performed. Thus the role played by the present petitioner viz-a-viz role played by other

workmen is not comparable. As the petitioner and other workmen are not similarly situate the submission that the petitioner stands discriminated and meted out with a hostile treatment, cannot be accepted. Besides that, though other workmen have participated in the gherao on 21-9-1974, the petitioner was not only charge sheeted for his conduct on that day but the petitioner was charge sheeted for his conduct touching the incidents that took place on 18th, 20th and 21st as well.

13. The next submission is about the evidence of the petitioner's witnesses not being considered by the labour court. Tt is pertinent to note that the evidence of the witnesses examined by the petitioner has been considered by the labour court in para 26 of the Award. In regard to the evidence of Mr. Takne, the tribunal finds that his evidence, though the witness is examined on behalf of the delinquent employee, goes against the petitioner as he has stated that no authority was given to the present petitioner to represent the Tool Room workers. He also deposed that as and when his supervisor wants to discuss any matter of the Tool Room department, he calls the witness to discuss the same and not the present petitioner.

14. In regard to the other witness by name Mr. Anant Bandekar, he has deposed in relation to the grievance of the workmen and the details in relation to the meeting held on 14-8-1974. The said witness has not deposed anything which has bearing on the incident that took place on 21st. The deposition of other witness Mr. Chafekar has also been considered. This witness has deposed in regard to the incident dated 21st and stated that at about 3.30 p.m. the present petitioner and other four employees had discussion with Mr. Kanchan. The evidence of other witnesses such as Mr. Chonkar and Mr. Mahadik are also considered by the labour court. Perusal of the award itself makes it clear that the labour court has considered the evidence of the witnesses examined by the petitioner and it is not as if the labour court has considered only the evidence of witnesses examined on behalf of the company.

15. After considering the entire oral and documentary evidence led by the parties on record, the labour court appreciated the evidence, weighed the same and proceeded to accept the evidence of Mr. Kanchan and Mr. Makhija who were officers gheraod on 21st at about 3.20 p.m. The incident has taken place during the working hours and obviously the workers involved had abandoned the work at that point of time.

Factually the second submission is contrary to the record.

16. The grievance made by the learned counsel for the petitioner is that the labour court has not considered the case as is expected to be considered by him under section 11-A of the Industrial Disputes Act. From the award it is crystal clear that the labour court has considered the entire evidence which was led before the enquiry committee independently and has reached a finding that the finding recorded by the enquiry officer in turn are properly recorded and are based on evidence and material on record. The labour court has categorically addressed the issue as to what is the duty casts on the labour court under section 11-A of the Industrial Disputes Act and has observed thus:

> *" Thus there is no dispute on the propositions laid down in the aforesaid case laws and the duty is cast under section 11-A of the Industrial Disputes Act 1947, to reappraise the evidence and satisfy itself as to whether the misconduct alleged against the workman was proved or not."*

17. The labour court was conscious about the duty casts upon it to reappraise the evidence with a view

to satisfy as to whether the misconduct alleged against the workmen is proved or not. After scanning the evidence, the labour court has held that the charge of misconduct has been proved against the petitioner. It was only on account of that exercise carried out by the labour court under section 11-A that though the labour court has held that serious charge of misconduct is proved against the petitioner, nonetheless the labour court has granted reinstatement after taking into consideration various aspects of the matter. It has found that the litigation was being fought for a long time i.e. more than 15 years and he has concluded that denial of wages to the petitioner for the said period would be sufficient punishment and hence directed reinstatement with continuity of service and without payment of back wages. The labour court could mould the punishment only because the labour court has consciously dealt with the issue under section 11-A of the Industrial Disputes Act.

18. It is next contended that the respondent company has certified standing orders governing the service conditions of the employees and charges must confirm to the list of enumerated misconduct under clause 27 of the Certified Standing Order. It is submitted that charge nos.1 to 4 are not covered and enumerated in the Certified Standing Order. Perusal of the charge

sheet reveals that charge nos. 1 and 3 reads thus:

> 1. Spreading dis-affection amongst the workmen towards the management.
>
> 3. Acting in a manner prejudicial and detrimental to the interest of the company and discipline:

These are the charges which needs to be scrutinised having regard to the contention raised by the petitioner.

> **Standing Order No.27 (c)(l)(q) reads thus:**
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> *"(c) wilful slowing down in performance of work, or abatement or instigation thereof:*
>
> *(l) commission of any act subversive of discipline or good behaviour on the premises of the establishment:*
>
> *(q) willful damage to work in process or to any property of the establishment;"*

It thus appears that charge no.1 falls outside the scope of Standing order No.27 whereas charge no.3

would only be relevant to the extend it relates to discipline and not to the extend the same accuses the petitioner of acting in a manner prejudicial and detrimental to the interest of the company.

19. So far as charge nos.2 and 4 are concerned, the same do very much stand covered by 27 (l) and (q). The learned counsel for the petitioner in support of the submission has placed reliance on a judgment of the Supreme Court in **M/s. Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and others reported in 1983 LAB.I.C. 1909.** The said judgment goes to hold that "when misconducts are neither defined nor enumerated in the standing orders and which may be believed by the employer to be misconduct ex post facto would not expose the workman to a penalty. It is further held that it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty."

20. The said submission is well merited so far as charge nos. 1 and part of charge 3 are concerned.

However, the other charges are very much covered by the standing order No.27 (l) and (q) and hence no fault can be found in imposing punishment touching other charges which are in the nature of wrongful confinement of the officers of the company by gheraoing them, that too during working hours, which resulted in disruption of the work in progress. The conduct of the petitioner is far from what can be termed as good behaviour.

22. The last submission made on behalf of the petitioner is to the effect that earlier award passed by the labour court, which has been set aside by the Division Bench of the High Court takes a proper view of the matter and appreciates the evidence correctly whereas the impugned award though passed by the same learned Judge deviates from the view taken in the earlier award, in the absence of any additional evidence or material being placed on record. It is relevant to note that the award passed prior in point of time , which has been set aside by the Division Bench of the High Court in an appeal, was an exparte award and the same was passed without hearing the present respondent. It is obvious that as the labour court had passed earlier award exparte it did not have the opportunity of hearing the other side viz. the respondent company. Even otherwise the award once set

aside, cannot be looked into, to find out as to whether the reasons assigned therein are better as compared to the impugned award or otherwise. The said submission made by the learned counsel is devoid of any substance and has to be rejected.

23. It is thus clear that charge nos.2, 4,5 and 6 are established against the petitioner touching the incident dated 18-9-1974 and 21-9-1974. This brings me to the consideration of the last submission that the denial of backwages for a period of about 18 years is by itself shockingly disproportionate punishment. The labour court has granted reinstatement despite proof of the serious charges as in the opinion of the labour court denial of backwages by itself would be a sufficient punishment. The labour court has also considered that the petitioner was all through out fighting for the other employees and not for his personal cause and hence granted reinstatement.

24. Taking into consideration various aspects of the matter, the tribunal has proceeded to grant reinstatement. However it has denied the backwages. After the proof of serious charges and after granting reinstatement if the employees is also to be paid the backwages, the same would amount to grant of premium for the acts of misconduct to the concerned workmen.

After reinstatement the petitioner has served for few years and then stood retired on attaining the age of superannuation. The view taken by the labour court is a possible view and hence no interference with the same is called for. It is not possible to hold that the approach of the labour court is perverse or that it has committed any patent illegality warranting interference.

25. In the result, there being no merit in the petition, the same stands dismissed with no orders as to costs. Rule discharged.

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